

JAN 28 2005

**FEDERAL ELECTION COMMISSION**  
999 E Street, N.W.  
Washington, D.C. 20463

**SENSITIVE**

**FIRST GENERAL COUNSEL'S REPORT**

PRE-MUR 423

DATE ACTIVATED: August 5, 2004

(MUR 5646)

EXPIRATION OF STATUTE OF  
LIMITATIONS: November 15, 2007

SOURCE:

INTERNALLY GENERATED

RESPONDENT:

Jesse Burchfield  
John Buchalski (in his personal capacity)  
Cohen for New Hampshire and John Buchalski,  
in his official capacity as treasurer  
Burton Cohen

RELEVANT STATUTES  
AND REGULATIONS

2 U.S.C. § 432(c)  
2 U.S.C. § 432(e)(2)  
2 U.S.C. § 432(h)  
2 U.S.C. § 439a(b)  
2 U.S.C. § 441i(e)(1)(A)  
11 C.F.R. § 110.3(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

STATE AGENCIES CHECKED:

New Hampshire Secretary of State,  
Election Division

FEDERAL AGENCIES CHECKED:

**I. INTRODUCTION**

This matter concerns

involving Cohen for New Hampshire, the principal campaign

committee of Burton Cohen, a former candidate for the 2004 Democratic nomination to the U.S.

Senate in New Hampshire; Cohen's campaign manager, Jesse Burchfield; and Burton Cohen.

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The \_\_\_\_\_ publicly available information indicates that Jesse Burchfield deliberately misreported the Committee's financial activity over the course of the 2004 election cycle, primarily by significantly underreporting disbursements, and failed to keep the requisite disbursement records. In addition, Burchfield may have used campaign funds for personal use and likely made excessive cash disbursements. The available information also indicates that the Committee and candidate Burton Cohen used funds from Cohen's state senate campaign to pay for expenses related to his U.S. Senate campaign knowing that it was improper to do so. Based on the information currently in hand, we recommend that the Commission find reason to believe that Jesse Burchfield; Cohen for New Hampshire and John Buchalski, in his official capacity as treasurer ("the Committee"); John Buchalski, in his personal capacity; and Burton Cohen violated the Federal Election Campaign Act, of 1971, as amended ("the Act"), and Commission regulations as discussed below.

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11 **II. FACTUAL AND LEGAL ANALYSIS**

12 **A. The Deliberate Misreporting of the Committee's Financial Activity & The**  
13 **Committee's Failure to Maintain Records of Disbursements**  
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15 On June 10, 2004, Burton Cohen abruptly dropped out of the U.S. Senate race in New  
16 Hampshire reportedly due to "a campaign situation beyond his control." *Beverley Wang, Cohen*  
17 *Not Saying Why He Quit*, The Associated Press State & Local Wire, June 11, 2004 *available at*  
18 *LEXIS, News & Business Library*. News reports referred to accounts by campaign staff and  
19 others that a "significant" amount of campaign cash was missing and that the campaign manager  
20 had left town. *Id.* and *Campaign Money Missing*, The Union Leader (Manchester NH), June 12,  
21 2004 at A1, *available at LEXIS, News & Business Library*. At a June 16, 2004 press conference,  
22 counsel hired by the Committee attributed Cohen's decision to drop out of the race in large part  
23 to "some concerns that have been raised in the past week about the accuracy and completeness of  
24 transactions disclosed" on reports the Committee had filed with the Commission. *Lawyer:*

1 *Cohen, Campaign Victimized, The Union Leader (Manchester NH), June 16, 2004 at A1,*  
2 *available at LEXIS, News & Business Library.*

3 Interviews with former Committee staff provide a picture of events that led to Burton  
4 Cohen's withdrawal from the race and campaign manager Jesse Burchfield's departure.  
5 According to Committee Finance Director Ellen Stankiewicz, who began working full-time with  
6 the campaign in March 2004, she had concerns about the campaign and Jesse Burchfield's  
7 performance and had numerous confrontations with him despite her relatively short tenure. [ ]

8 [ ] Burton Cohen has acknowledged that Burchfield was having problems  
9 managing some employees. [ ] Ms. Stankiewicz spoke with Cohen on June 3, 2004 about  
10 replacing Burchfield and contacted national finance director Kelly Bjorkland to search for a new  
11 campaign manager. [ ] An interview with a prospective applicant was scheduled  
12 for June 7, 2004. The evening before the interview, Stankiewicz brought the applicant's resume  
13 with her to a meeting with Cohen. *Id.*

14 Stankiewicz's description of Burchfield's behavior around the time of these discussions  
15 suggests that Burchfield may have suspected his job was in jeopardy. On June 4, the day after  
16 Stankiewicz's first discussion with Cohen about replacing Burchfield, Burchfield disappeared  
17 from the office for hours, and he looked "anxious" and "defeated" when he was in the office. [ ]

18 [ ] On the day of the scheduled interview with Burchfield's potential replacement,  
19 Cohen and others at the campaign received an e-mail from Burchfield stating that the campaign  
20 was broke and he was leaving to take a non-political job in Memphis, Tennessee. [ ]

21 [ ] Following receipt of the e-mail, two campaign staffers went to Burchfield's apartment and  
22 found the door open and most of his belongings gone. [ ]

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1 At Stankiewicz's urging, Cohen called the bank to check the balance of the Committee's  
2 accounts as of June 7, 2004. [redacted] Cohen learned that the accounts contained about  
3 \$15,000. [redacted] Until then, Stankiewicz had believed the campaign had about \$350,000. [redacted]  
4 [redacted] The last Committee disclosure report filed prior to Burchfield's departure showed  
5 cash on hand of about \$397,000 as of March 31, 2004.

6 The Committee's counsel notified the Commission in a June 23, 2004 letter responding  
7 to a Request for Further Information from the Reports Analysis Division that the Committee was  
8 in the process of "a thorough review" of its finances and reporting and would file necessary  
9 amendments thereafter. On July 15, 2004, counsel advised the Commission in a letter  
10 accompanying the 2004 July Quarterly Report that the review had uncovered a "significant  
11 discrepancy" in the Committee's previously reported cash on hand. The adjusted cash on hand  
12 figure of \$170,000 in the July Quarterly Report was \$227,289 less than the ending cash-on-hand  
13 figure previously reported in the 2004 April Quarterly Report. Counsel described the adjusted  
14 figure as an approximation and said that the Committee's reports would be amended at the  
15 conclusion of the financial review, a process he described as "a reconstruction of certain  
16 transactions."

17 More recently, on December 28, 2004, the Committee filed amendments to its 2004 April  
18 and July Quarterly Reports with an accompanying December 22, 2004 cover letter from  
19 Committee counsel indicating that the financial review of the Committee's transactions is  
20 ongoing. The amendments show that the end cash on hand as originally reported in the 2004  
21 April Quarterly indeed had been inflated but by \$51,851 rather than \$227,289. The amendments  
22 also reflect that disbursements had been underreported by about \$87,579 in the original 2004

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1 April Quarterly Report and by \$84,652 in the original 2004 July Quarterly Report.<sup>2</sup>

2 Contributions had also been underreported by \$40,460 in the original April Quarterly Report.

3 The recently filed amendments confirm that the Committee filed inaccurate disclosure  
4 reports that significantly underreported its disbursements and underreported its contributions in  
5 calendar year 2004. Since counsel's December 22, 2004 cover letter indicates that additional  
6 amendments will be filed as necessitated by the Committee's ongoing financial review and no  
7 amendments have been filed for reports covering reporting periods in 2003, the extent of  
8 misreporting may be greater.<sup>1</sup>

9 \_\_\_\_\_, Jesse Burchfield acknowledged that the  
10 Committee's finances were misreported since its first disclosure report, the 2003 April Quarterly  
11 Report, because certain expenses improperly paid for with leftover funds from Cohen's state  
12 campaign could not be reported. \_\_\_\_\_ Burchfield admitted that he alone prepared the  
13 Committee's reports, and apart from the initial misreporting in the 2003 April Quarterly Report,  
14 apparently attributable to the use of state campaign funds for which he implies that Burt Cohen is  
15 responsible, Burchfield accepted responsibility for purposely understating the Committee's  
16 expenditures in the 2003 July Quarterly Report and the reports filed thereafter.<sup>1</sup> \_\_\_\_\_

17  
<sup>2</sup> The original 2004 July Quarterly Report was filed after Burchfield left the Committee and covers a time period during which Burchfield had primarily managed the campaign and its finances. The Committee also filed an amendment to the 2004 October Quarterly Report on December 28, 2004 that indicates disbursements during that reporting period had been initially underreported by \$84,294.

1 Burchfield underreported expenditures in order to make it appear that the Committee had more  
2 cash on hand than it did. *Id.* He identified the greatest understatement of expenses as occurring  
3 in the 2003 Year End Report, which resulted in the Committee's cash-on-hand being overstated  
4 by close to \$300,000. \_\_\_\_\_

5 Burton Cohen and former Committee staffers \_\_\_\_\_ confirmed that

6 Burchfield was responsible for filing reports with the Commission. \_\_\_\_\_

7 Although John Buchalski is listed as the Committee's treasurer in its Statement of  
8 Organization, Cohen stated that Buchalski, a war veteran, was treasurer "in title only." \_\_\_\_\_

9 Cohen asked Buchalski to serve as treasurer to have a veteran involved in the campaign  
10 and said his only function was to sign the Committee's disclosure reports. *Id.* Buchalski  
11 confirmed this limited role in news accounts, stating he had no professional financial  
12 background, handled no campaign money, and sometimes signed reports that were only partially  
13 complete. *Lawyer: Cohen, Campaign Victimized, supra.*<sup>6</sup> He admitted that he signed the  
14 Committee's reports but opined in the press that his signature had been forged on a letter and two  
15 reports filed with the Commission, the 2004 April Quarterly and the 2003 October Quarterly.  
16 *See Cohen Alike Believes Signature Forged, The Union Leader (Manchester NH), June 18, 2004*  
17 *at A12, available at LEXIS, News & Business Library.* Indeed, Jesse Burchfield admitted that

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<sup>5</sup> Burchfield \_\_\_\_\_ identified the "fourth quarter 2003" report (the 2003 Year End Report) as the one containing the largest understatement of expenses, resulting in an overstated cash-on-hand of about \$300,000 when the true cash on hand was about \$100,000. However, the original and amended 2003 Year End Reports reflected cash-on-hand figures of \$247,107 and \$242,375, respectively. If the actual cash balance was about \$100,000 at year-end as Burchfield said, the overstatement in the 2003 Year End Reports would have been between \$142,000-147,000 not close to \$300,000. In light of the fact that the 2003 Year End Report has not been amended since the Committee began its financial review, Burchfield's memory may yet prove to be accurate.

<sup>6</sup> Buchalski also stated that he had been told by an unidentified person to expect to sign blank forms that campaign aides would complete. *Report: Cohen's Manager Hired Lawyer, The Union Leader (Manchester, NH), June 23, 2004 at A8, available in LEXIS, News & Business Library.*

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1 he signed the Committee's original and amended 2004 April Quarterly Reports using  
2 Buchalski's name. \_\_\_\_\_

3 In addition to preparing the Committee's disclosure reports and signing Buchalski's name  
4 to the 2004 April Quarterly Reports, Burchfield performed other finance-related duties.

5 According to Committee Field Director Paul Dunn, no one could spend funds without  
6 Burchfield's approval. \_\_\_\_\_ Burchfield controlled the checkbook, the bank statements, the  
7 use of the Committee's ATM and debit card and he alone possessed the Personal Identification  
8 Number ("PIN") necessary to use the card's ATM function. \_\_\_\_\_ He also

9 deposited contributions and prepared checks to pay the campaign's expenses for Cohen's  
10 signature because Cohen was the sole signatory on the Committee's bank accounts. \_\_\_\_\_

11 \_\_\_\_\_ Cohen's status as sole account signatory should have been a check on Burchfield's control of  
12 the Committee's expenditures, but Burchfield admitted that he routinely signed Cohen's name on  
13 checks without his authorization. \_\_\_\_\_ Cohen was aware of at least one check where someone  
14 else apparently signed his name and he acknowledged that he signed several blank checks at  
15 Burchfield's insistence prior to leaving on a trip to Washington D.C. in May 2004. \_\_\_\_\_

16 In addition to Burchfield's admission that he underreported expenditures and Committee  
17 counsel's acknowledgment of misreporting, information from other former  
18 Committee staffers provides additional confirmation of misreporting. According to Ellen  
19 Stankiewicz, copies of Committee bank account statements obtained after Burchfield left the  
20 campaign listed checks that were not reported in the Committee's disclosure reports. \_\_\_\_\_

21 \_\_\_\_\_ Paul Dunn said that he and others reviewed the Committee's 2004 April Quarterly  
22 Report and its bank statements after receiving Burchfield's departing e-mail and noted a  
23 \$300,000 discrepancy between the nearly \$400,000 ending cash on hand in the April Quarterly

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1 Report and the bank account balances of about \$100,000. [redacted] Burt Cohen  
2 expressed his belief that Burchfield was exaggerating the numbers reported to the Commission  
3 and that Burchfield provided false information to the Commission in the 2004 April Quarterly  
4 Report. [redacted]

5 None of the former campaign staff [redacted] had been aware that the  
6 campaign was having financial difficulties until they received Burchfield's resignation e-mail.  
7 [redacted] Burchfield confirmed that he told no one of the  
8 differences between the Committee's finances as reported and its true financial status and said  
9 that none of the campaign staff was aware of the misreporting. [redacted] Indeed, Burchfield may  
10 have tried to conceal the misreporting from others in the campaign. According to Burton Cohen,  
11 at one point, the Committee's Assistant Finance Director, Sharon Valdez, requested the bank  
12 statements to prepare a reconciliation, but Burchfield refused to provide them. [redacted]

13 Finally, in addition to misreporting the Committee's finances, Burchfield also  
14 acknowledged that the Committee did not keep records of its disbursements.<sup>7</sup> [redacted] The  
15 Committee's original 2004 July Quarterly Report, filed after Burchfield's departure, reflects the  
16 lack of recordkeeping. It included about \$122,000 in disbursements that contained no address or  
17 purpose or inadequate purposes such as "information requested" and "expenses."<sup>8</sup> The missing  
18 information and the fact that the Committee apparently had to request information from payees  
19 demonstrates the Committee's failure to maintain records. As noted earlier, the July Quarterly  
20 Report has been amended, but not all of the missing information has been provided.

21 [redacted]

<sup>8</sup> These facts also serve as an additional basis for pursuing violations of 2 U.S.C. § 434(b).

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**Liability for Misreporting and Recordkeeping Violations**

The Act requires every political committee to have a treasurer. 2 U.S.C. § 432(a). No expenditure shall be made for or on behalf of a political committee without the authorization of the treasurer or his or her designated agent. *Id.* A principal campaign committee of a candidate shall file a Statement of Organization that includes the name and address of the treasurer of the committee and the name, address, and position of the custodian of the committee's books and accounts. 11 C.F.R. § 102.2(a)(1).

The Act also imposes reporting obligations on committee treasurers. Each treasurer of a political committee shall file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. *See* 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports shall include, *inter alia*, the amount of cash on hand at the beginning and end of a reporting period, the total amount of receipts and disbursements, the identification of each person who makes a contribution in excess of \$200 in an election cycle, and the name and address of each person to whom an expenditure exceeding \$200 is made together with the date, amount and purpose of the expenditure. *See* 2 U.S.C. § 434(b). Committee treasurers and any other person required to file any report or statement under the Commission's regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it. 11 C.F.R. § 104.14(d).

Committee treasurers also have recordkeeping obligations. Among them, a treasurer must keep an account of the name and address of every person to whom a disbursement is made, together with the date, amount and purpose of the disbursement. 2 U.S.C. § 432(c)(5). In addition, for each disbursement in excess of \$200 by or on behalf of the Committee, the treasurer shall obtain and keep a receipt, invoice or cancelled check. *Id.* and 11 C.F.R. § 102.9(b)(2).

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1       The current information indicates that the Committee failed to accurately and completely  
2 report its disbursements and cash on hand beginning with the 2003 April Quarterly Report  
3 through the 2004 July Quarterly Report. Moreover, the Committee failed to maintain the  
4 required records of its disbursements. Therefore, we recommend that the Commission find  
5 reason to believe that Cohen for New Hampshire and John Buchalski, in his official capacity as  
6 treasurer, violated 2 U.S.C. §§ 434(b) and 432(c).

7       In addition, we believe that the current information provides a basis to find both John  
8 Buchalski and Jesse Burchfield personally liable for the Committee's misreporting. Although  
9 the candidate has acknowledged that Buchalski was treasurer in name only, he is listed as the  
10 treasurer in the Committee's Statement of Organization and signed most of the Committee's  
11 disclosure reports with the exception of the 2004 original and amended April Quarterly Reports  
12 and possibly the 2003 October Quarterly Report. As the designated treasurer, Buchalski was  
13 responsible for ensuring the accuracy and completeness of the information contained in the  
14 Committee's reports and for ensuring that disbursement records were maintained. As discussed  
15 above, the Committee's reports were inaccurate and incomplete. Buchalski's reckless failure to  
16 perform his duties is evidenced by his acknowledgment that he sometimes signed reports that  
17 were incomplete.

18       Jesse Burchfield, though not designated as the Committee's treasurer, acted as the  
19 Committee's de facto treasurer in every other capacity. He prepared the Committee reports,  
20 approved disbursements, and made deposits. In addition, he signed the 2004 April Quarterly  
21 Reports using John Buchalski's name. In preparing the Committee's reports and controlling its  
22 disbursements, Mr. Burchfield was also responsible for the accuracy and completeness of the  
23 reports and for maintaining the proper disbursement records. A person acting as treasurer but not

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officially designated as treasurer may be held liable for reporting violations. *See e.g., FEC v. Committee to Elect Bennie O. Batts*, No. 87-5789 (S.D.N.Y. February 24, 1989) and accompanying pleadings filed by the FEC (setting forth in detail the respective roles of the named treasurer and others performing financial duties).

Information \_\_\_\_\_ also indicates that Burchfield's misreporting of the Committee's finances was knowing and willful. To be liable for a knowing and willful violation, respondents must act with the knowledge that they are violating the law. *FEC v. John A. Dramesi for Cong. Comm.*, 640 F. Supp. 985, 987 (D.M.J. 1986). An inference of a knowing and willful act may be drawn "from the defendant's elaborate scheme for disguising" his or her actions. The evidence need not show that a defendant "had specific knowledge of the regulations" or "conclusively demonstrate" a defendant's "state of mind," if there were "facts and circumstances from which the jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal." *United States v. Hopkins*, 916 F.2d 207, 213 (5th Cir. 1990) (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), cert. denied, 439 U.S. 838 (1989)).

An inference that Burchfield knew that his misreporting was unauthorized and illegal may be drawn from Burchfield's failure to provide copies of the Committee's bank statements to Assistant Finance Director Sharon Valdez and from his abrupt disappearance the day an interview was scheduled for his potential replacement. These facts suggest that he tried to hide conduct he knew to be wrongful and fled when he believed discovery was imminent. We believe

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1 these facts are sufficient to trigger an investigation aimed at obtaining independent evidence  
2 concerning the nature of Burchfield's conduct.<sup>7</sup>

3 Accordingly, based on John Buchalski's reckless failure to ensure the accuracy of the  
4 information contained in the Committee's disclosure reports and to ensure that  
5 the appropriate disbursement records were kept, we recommend that the Commission find reason  
6 to believe that John Buchalski, in his personal capacity, violated 2 U.S.C. §§ 434(b) and 432(c).  
7 Based on Jesse Burchfield's role as the Committee's ~~ex facto~~ treasurer in failing to keep  
8 disbursement records and in preparing the Committee's inaccurate reports, and in light of the  
9 facts suggesting his misreporting was deliberate, we recommend that the Commission find  
10 reason to believe that Jesse Burchfield violated 2 U.S.C. § 432(c) and knowingly and willfully  
11 violated 2 U.S.C. § 434(b).

12 **B. Personal Use of Campaign Funds/Excessive Cash Disbursements**

13 The Act prohibits any person from converting contributions to a Federal candidate for  
14 personal use. 2 U.S.C. § 439a(b)(1). "Personal use" means any use of funds in a campaign  
15 account of a federal candidate to fulfill a commitment, obligation or expense of any person that  
16 would exist irrespective of the candidate's campaign duties. 11 C.F.R. § 113.1(g). The term  
17 "person" includes individuals and committees. 2 U.S.C. § 431(11).

18 \_\_\_\_\_, Jesse Burchfield, who did not have a personal bank account due to an  
19 outstanding debt, admitted that he used campaign funds to pay for personal expenses, chiefly  
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1 through use of the Committee's ATM/debit card. [redacted] He specifically admitted that he  
2 used the Committee's bankcard to withdraw about \$300 in cash on a vacation in New Orleans,  
3 and may have withdrawn about \$600 in campaign cash for his use on a trip to San Francisco with  
4 family members in December 2003. [redacted] In addition, Burchfield admitted that he used the  
5 debit function of the bankcard to pay for a personal website subscription in an unspecified  
6 amount. [redacted] Campaign funds were also used to benefit others such as the purchase of a bed  
7 for campaign staffer Jeremy Fielder in August 2003. [redacted]

8 Burten Cohen corroborated Burchfield's use of campaign funds for his own personal  
9 expenses. Cohen said he was aware that Burchfield used the Committee's bankcard to purchase  
10 what he described as "Internet porn." [redacted] He also believed that Burchfield used the  
11 bankcard for other personal expenses, including a rental car during a trip to California in March  
12 or April 2004. *Id.*

13 In addition to these specific instances of personal use, Burchfield also made cash  
14 withdrawals, some of which may have been used to pay other personal expenses. According to  
15 Ellen Stankiewicz, the Committee's bank statements reflected many cash withdrawals of \$1,000  
16 each. [redacted] Cohen recalled that Stankiewicz advised him that there were  
17 approximately \$9,000 in ATM withdrawals. [redacted] ATM withdrawals totaling \$500 are also  
18 documented in the Committee's 2004 July Quarterly Report, which was filed after Burchfield's  
19 departure but covers the time period when he managed the campaign. As noted earlier,  
20 Burchfield was the only campaign staffer who had the bankcard PIN that permitted ATM  
21 withdrawals.

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1 Burchfield offered two explanations for the ATM cash withdrawals: he used cash to pay  
2 for some personal expenses as previously described, and he used cash to purchase stamps for the  
3 campaign and pay the salaries of college students working for the campaign. [redacted]

4 Burchfield characterized his use of ATM withdrawals to pay personal expenses as a way to make  
5 up the difference between his full monthly salary and the salary he actually paid himself. [redacted]

6 [redacted] According to Burchfield, his salary was \$5,000 per month plus a \$1,000 housing stipend, an  
7 amount paid directly to Burchfield's housing provider.<sup>10</sup> He estimated that in the first five  
8 months of 2004 he received between \$25,000-\$26,000 in salary payments rather than the  
9 \$30,000 presumably owed to him, and made approximately \$600 in ATM withdrawals. *Id.* He  
10 did not tell Cohen that he was taking less than his full salary. [redacted]

11 Other information conflicts with Burchfield's description of his salary. Burton Cohen  
12 stated that Burchfield's most recent salary for work on the federal campaign was \$5,000 a month  
13 plus a \$1,000 housing stipend that covered his rental apartment. [redacted] If Cohen's statement is  
14 accurate, then Burchfield did receive his full salary based on his own estimation that he was paid  
15 between \$25,000-\$26,000 in 2004. Any campaign funds spent by Burchfield for personal

<sup>10</sup> The Committee's disclosure reports reflect about \$13,700 in payment to third parties for rent for both Burchfield and the Committee finance director. Burchfield says the Committee also gave a housing stipend to other campaign staffers. [redacted] The Committee's payment of its staff's housing costs could be viewed as personal use of campaign funds since presumably the staffers would have incurred housing costs irrespective of Cohen's campaign. See Advisory Opinion ("AO") 1985-42 (campaign's payment of partial rent of candidate's apartment used by staff on trips to Washington for campaign business is not personal use but may be if the apartment is provided for staff visits to D.C. for reasons other than campaign activities). AO 1985-42 was superseded by AO 1995-8 to the extent it permitted payment for a candidate-owned apartment in light of amendments to the personal use regulations in 1995. See also Explanation and Justification for Final Rules on Personal Use of Campaign Funds, 60 Fed. Reg. 7862, 7864 (final rules apply to personal use of campaign funds "regardless of whether the beneficiary is the candidate, a family member of a candidate or some other person.")

On the other hand, Stankiewicz and Burchfield characterized the campaign's payment of rent for certain campaign staffers as a stipend, a characterization that connotes it was part of a compensation package. [redacted]

[redacted] Moreover, neither Burchfield nor Stankiewicz appear to have been residents of New Hampshire prior to their work on Cohen's campaign as, arguably, neither would have required living arrangements in New Hampshire in the absence of Cohen's campaign. We make no recommendation on this issue at this time pending receipt of additional information during discovery.

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1 expenses under these facts constituted personal use. The Committee's disclosure reports reflect  
2 still another salary figure. They show \$21,000 in salary payments to Burchfield between January  
3 and June 4, 2004, an average of \$4,200 per month, tending to corroborate Burchfield's statement  
4 that he didn't receive his full salary, whether it was \$5,000 per month as Cohen stated or \$6,000  
5 per month as Burchfield maintained. The disclosure reports, however, are admittedly inaccurate.

6 In light of Jesse Burchfield's overall conduct including his use of the campaign bankcard  
7 to pay for an Internet subscription and vacation expenses, the discrepancies concerning the level  
8 of Burchfield's salary and the extent to which he received his full salary, the multiple cash  
9 withdrawals reflected in the Committee's disclosure reports and bank statements, and the use of  
10 campaign funds to pay for a staff member's bed, we recommend that the Commission find  
11 reason to believe that the Committee and John Buchalski, in his official capacity as treasurer, and  
12 Jesse Burchfield violated 2 U.S.C. § 439a(b).

13 In addition, Burchfield's use of cash withdrawals to pay for student salaries and postage  
14 supports an inference that the Committee also violated 2 U.S.C. § 432(h) by making excessive  
15 cash disbursements. That provision requires political committees to make disbursements by  
16 check except for disbursements of \$100 or less from a petty cash fund. 2 U.S.C. § 432(h).  
17 Burchfield did not quantify the amounts he withdrew to buy stamps and pay student salaries, but  
18 the Committee's 2004 April Quarterly Report reflects multiple disbursements to the U.S. Post  
19 Office in amounts exceeding \$100.<sup>11</sup> Therefore, we recommend that the Commission find

20  
  
<sup>11</sup> Those disbursements, all to the U.S. Post Office for unreported purposes are: \$555 on January 3, 2004;  
\$111 on January 16, 2004; \$111 on February 4, 2004; \$222 on February 18, 2004; and \$370 on March 9, 2004.

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1 reason to believe that the Committee and John Buchalski, in his official capacity as treasurer,  
2 violated 2 U.S.C. § 432(h).<sup>7</sup>

3 **C. Use of Non-Federal Funds to Pay for Federal Campaign Activity**

4 The Act, as amended by the Bipartisan Campaign Reform Act of 2002, prohibits a federal  
5 candidate, a candidate's agent, and entities established, financed, maintained or controlled by, or  
6 acting on behalf of, a candidate from soliciting, receiving, directing, transferring or spending  
7 funds in connection with a Federal election unless the funds are subject to the limitations,  
8 prohibitions and reporting requirements of the Act. 2 U.S.C. § 441j(e)(1)(A). Moreover,  
9 Commission regulations specifically prohibit transfers of funds or assets from a candidate's  
10 account for a non-federal election to his or her principal campaign committee for a federal  
11 election. 11 C.F.R. § 110.3(d). Both provisions are designed to prevent the use in federal  
12 elections of funds raised outside the limits and prohibitions of the Act and to ensure that all funds  
13 used in federal elections are reported.

14 New Hampshire state law permits individuals and political committees to make  
15 contributions of up to \$1,000 to a candidate who has not agreed to voluntarily limit campaign  
16 expenditures. N.H. Rev. Stat. Ann. § 664:4, V. Corporations are also permitted to contribute  
17 within that limit based on a 1999 U.S. District Court decision ruling that New Hampshire's  
18 prohibition on corporate contributions was unconstitutional. *See Kennedy v. Gardner*, 1999 WL  
19 814273 (D.N.H. Sep 30, 1999) (No. CV 98-608-M) and Opinion Letter dated June 6, 2000 from  
20 Deputy Attorney General to William M. Gardner, Secretary of State, at  
21 <http://www.sos.nh.gov/political%20page.htm>. The New Hampshire Secretary of State's Office

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1 has advised us that Cohen did not agree to limit campaign expenditures in his 2002 state senate  
2 election.

3 According to Jesse Burchfield, leftover funds from Burton Cohen's state senate campaign  
4 were used to pay for expenses related to Cohen's federal campaign and Cohen signed all of the  
5 checks written on the state account(s). [redacted] Burchfield specifically identified two  
6 instances in which state funds financed federal activity: payment(s) to Cunningham, Harris &  
7 Associates, a consulting firm, and the purchase of office furniture used by the Committee. [redacted]  
8 Indeed, Burchfield attributed the Committee's initial misreporting to the fact that state campaign  
9 funds were improperly used to pay federal campaign expenses and thus, could not be reported.

10 [redacted]  
11 Ellen Stankiewicz confirmed that state campaign funds were used to pay for federal  
12 election expenses, although she identified the state-financed expenses as consisting chiefly of  
13 salary payments. [redacted] According to Stankiewicz, as part of her research into  
14 Burchfield's activities after he resigned, she learned that state campaign funds were used to pay  
15 Burchfield's and Sharon Valdez's salaries for duties related to the federal campaign and  
16 Burchfield's housing stipend. *Id.* Stankiewicz also said Valdez confirmed to her that state funds  
17 were used in this manner. *Id.*

18 State campaign disclosure reports, signed by Cohen, lend support to Stankiewicz's  
19 statement that state funds were used to pay Burchfield and Valdez's federal campaign salaries  
20 and housing costs.<sup>13</sup> The state campaign reports reflect a \$35,000 surplus following Cohen's  
21 November 5, 2002 reelection to the state senate. See Attachment 3. From this surplus, the

<sup>13</sup> New Hampshire state law requires candidates for state office who make expenditures exceeding \$500 to file and sign statements of receipts and expenditures together with the candidate's designated fiscal agent. N.H. Rev. Stat. Ann. §§ 664:7 and 664:12. Candidates are not required to set up a separate political committee, and, according to the New Hampshire Secretary of State's Office, Burt Cohen did not do so in 2002.

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1 campaign reported \$12,750 in "staff" payments to Burchfield and Valdez and an \$1,800  
2 payment to a third party for "rental space" between November 15, 2002 and January 31, 2003.<sup>14</sup>  
3 Attachment 3 at 5. Although some of the earlier payments to Burchfield could have been for his  
4 work as Cohen's state campaign manager during the campaign and as the campaign wound up its  
5 activities, Cohen had publicly announced that he would explore a bid for the U.S. Senate as early  
6 as December 4, 2002. *See Campaigns of 2004 New Hampshire Senate: Never Take the*  
7 *Underdog for Granite*, The Hotline, December 5, 2002, available at Wustlaw, 12/5/2002 APN-  
8 HO 22. Viewing the timing of the payments together with Stankiewicz's statement and Valdez's  
9 confirmation, it is likely that, at a minimum, staff and rent payments of \$8,050 made in January  
10 2003 were in connection with Cohen's federal election.<sup>15</sup>

11 As for Burchfield's statements that state funds paid for consulting services and furniture  
12 for the federal campaign, the state campaign's reports do not reflect any payments to  
13 Cunningham, Harris & Associates or any payments described as for furniture. However,  
14 Cunningham, Harris & Associates did serve as a fundraising consultant to the federal campaign  
15 as illustrated by a number of reported disbursements to them appearing in the Committee's 2003  
16 April Quarterly Report. If surplus state campaign funds were used to pay Cunningham, Harris &  
17 Associates and to purchase furniture, then two scenarios are possible: either the state campaign  
18 reports do not accurately reflect to whom disbursements were made, or the state campaign  
19 received unreported contributions that were then used to pay federal campaign expenses.

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<sup>14</sup> The payment for rental space was made to John Hoyt, the same person to whom the Committee later made disbursements for "rent - finance director." Also, the relevant state report appears to mistakenly list the wrong year for the November payments. It reflects payments being made on dates in November 2003, but the report itself was filed on May 5, 2003.

<sup>15</sup> Burton Cohen filed a Statement of Candidacy for the 2004 U.S. Senate race on January 16, 2003.

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1 New Hampshire's individual contribution limits are below the Act's limits and Cohen's  
2 state reports reveal no corporate contributions so it is possible that the state funds used in the  
3 federal campaign may have consisted of permissible funds under the Act. Nevertheless, none of  
4 the funds were subject to the Act's reporting provisions as required by Section 441i(e)(1)(A),  
5 and in any case, 11 C.F.R. § 110.3(d) flatly prohibits a candidate's state campaign from  
6 transferring funds to the candidate's federal campaign. Moreover, given Burchfield's statement  
7 that state funds were used to pay for expenses that are not reflected in the state campaign reports,  
8 we cannot be sure the reports accurately list all contributions received and expenditures made by  
9 the state campaign.

10 Based on current information, it appears that state funds were used to pay for federal  
11 election expenses with checks drawn on a state campaign account(s). A candidate who receives  
12 a contribution or makes a disbursement in connection with his election to federal office is  
13 considered to have received the contribution or made the disbursement as an agent of his  
14 authorized committee. 2 U.S.C. § 432(e)(2). According to Burchfield, Burton Cohen signed all  
15 checks drawn on the state account(s). Thus, both Cohen (the candidate) and the Committee (an  
16 entity established by the candidate), through Cohen, spent funds for Cohen's federal election that  
17 were not subject to the limitations, prohibitions and reporting requirements of the Act. Both also  
18 effectively received non-federal funds from Cohen's state campaign. See conciliation agreement  
19 in MUR 4974 (Tiberi for Congress)(candidate's federal and state committees violated 11 C.F.R.  
20 § 110.3(d) when his state committee made a contribution to, and incurred expenses on behalf of,  
21 his federal committee).

22 The use of state funds in Cohen's federal campaign also appears to have been knowing  
23 and willful. Burchfield told Cohen that state funds could not be used in a federal campaign after

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1 receiving advice on that issue from a Committee consultant. Cohen apparently \_\_\_\_\_  
2 \_\_\_\_\_ and wrote checks on the state account for federal  
3 campaign expenses anyway. \_\_\_\_\_ Accordingly, this Office recommends that the Commission  
4 find reason to believe that the Committee and John Buchalski, in his official capacity as  
5 treasurer, and Burton Cohen knowingly and willfully violated 2 U.S.C. § 441i(c)(1)(A) and  
6 11 C.F.R. § 110.3(d).

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**IV. RECOMMENDATIONS**

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1. Open a MUR.
2. Find reason to believe that Cohen for New Hampshire and John Buchalski, in his official capacity as treasurer, violated 2 U.S.C. §§ 434(b), 432(c), 439a(b), and 432(h).
3. Find reason to believe that John Buchalski, in his personal capacity, violated 2 U.S.C. §§ 434(b) and 432(c).
4. Find reason to believe that Jesse Burchfield violated 2 U.S.C. §§ 432(c) and 439a(b).
5. Find reason to believe that Jesse Burchfield knowingly and willfully violated 2 U.S.C. § 434(b).

6. Find reason to believe that Burton Cohen and Cohen for New Hampshire and John Buchalski, in his official capacity as treasurer, knowingly and willfully violated 2 U.S.C. § 441i(e)(1)(A) and 11 C.F.R. § 110.3(d).

7. Approve the attached Factual and Legal Analyses.

8.

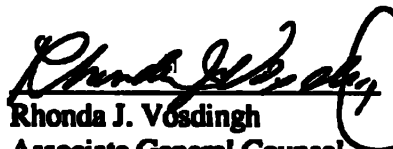
9. Approve the appropriate letters.

Lawrence H. Norton  
General Counsel


Date


4/28/05

BY:

  
Rhonda J. Vording  
Associate General Counsel  
for Enforcement

  
Sid Rocke  
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Dawn M. Odrowski  
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